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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179798
Party	Plaintiff Medquest Global Marketing Research, Inc.
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Date	12/18/2007
Attachments	Opposition to Request for Extension re Discovery - Filed.pdf (5 pages)(191076 bytes)

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Opposed Mark: MEDQUEST
U.S. Trademark App. Ser. No. 76/661,551

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Medquest Global Marketing Research, Inc.)	
)	
Opposer,)	Opposition No.: 91179798
)	
v.)	
)	
Medquest Research, LLC)	OPPOSITION TO APPLICANT'S
)	REQUEST FOR EXTENSION OF TIME
)	FOR RESPONDING TO DISCOVERY
Applicant.)	
)	
)	

On December 3, 2007, Applicant filed a document entitled "Applicant's request for 45-Day Extension of Time for Responding to Opposer's Discovery" (hereinafter "Applicant's Request"). However, 37 CFR § 2.120(a) states that absent stipulation by the parties with approval by the Board, an extension to respond to discovery requests may be granted "upon motion granted by the Board, or by order of the Board." Consequently, Opposer responds to Applicant's Request as if it were a motion under 37 CFR § 2.120(a).

Opposer mail served a First Set of Interrogatories and a First Set of Request for Production of Document and Things on Applicant on October 25, 2007 (hereinafter “Opposer’s Interrogatories and Document Requests”). Applicant has yet to provide any objections, responses, or documents.

Applicant mail served a First Set of Interrogatories and a First Set of Request for Production of Document and Things on Opposer on November 1, 2007. Opposer responded to Applicant’s discovery requests without delay.

Applicant waited until November 26th, just three (3) days before its responses were due, to contact Opposer and request an extension of time to respond. Applicant now requests (or moves) the Board grant a 45-day extension of time to respond to discovery, giving Opposer over eighty (80) days to respond to discovery which should have been responded to in thirty-five (35) days and which simply includes 15 Interrogatories and 36 Document Requests.

If a motion to extend time is filed prior to the expiration of the period set, the moving party need only show good cause for the requested extension. TBMP §509.01, Fed. R. Civ. P. 6(b). Here, however, Applicant filed its Request (motion) on December 3, 2007, after Applicant’s responses were due on November 29, 2007. If a motion to extend time is filed after the expiration of the period, the moving party must show that its failure to act during the time allowed was the result of excusable neglect. TBMP §509.01, Fed. R. Civ. P. 6(b).

Applicant requests (or moves) the Board without showing good cause for its request much less that its failure to respond was the result of excusable neglect. Moreover, a motion to extend must set forth the facts “with particularity” that constitute good cause. TBMP § 509.01(a). Applicant has failed to do so. Instead, Applicant makes only conclusory statements that Applicant is “a small business” whose principle officer “has been traveling extensively on

business since Opposer's discovery requests were served." [Applicant's Request, p. 2, ¶ 2.]

Applicant includes no particular details as to the extent of travel, such as dates and locations, and makes no mention of whether this travel was in areas where communication was not possible.

In this day and age, where electronic response documents can be exchanged via electronic mail and where computers, internet access and facsimile machines appear in most cities and in most hotels, extensive travel in the ordinary course of business is simply not an excuse to avoid answering discovery requests. If Applicant needed additional time to review documents physically located in a place where Applicant's principle officer would not be prior to the response deadline, Opposer would have agreed to a reasonable extension of time to receive the responsive documents. However, Applicant did not make such a request and has yet to provide any response whatsoever to Opposer's Interrogatories and Document Requests.

Moreover, Applicant fails to mention two highly relevant facts. First, this Opposition was filed after Applicant sent a cease and desist letter to Opposer dated March 15, 2007 claiming priority in the MEDQUEST mark. Priority of use is the central issue in this Opposition. Applicant must have reviewed documents and facts relevant to the priority issue in order to order to make such an allegation nine (9) months ago. Therefore, it seems unlikely that Applicant could not provide responses to interrogatories and document requests to at least those relevant to the issue of priority and provided supplemental response where necessary. Second, Opposer itself is not a large company and conducts business which includes travel, but unlike Applicant, Opposer worked through the Thanksgiving holiday via electronic mail and facsimile in order to provide responses to Applicant's discovery by the response deadline.

Opposer believes Applicant's lack of providing *any* response to Opposer's Interrogatories and Document Requests is simply a delay tactic that should not be allowed. Applicant has had

ample time to provide responses. Therefore, Applicant respectfully requests the Board deny Applicant's Request for a 45 day extension of time to respond to Opposer's discovery and instead order response to be hand-delivered within five (5) business days of the Board's order.

Dated: December 18, 2007

MEDQUEST GLOBAL MARKETING RESEARCH, INC

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Attorneys for Opposer

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the instant action. My business address is 6100 Center Drive, Suite 630, Los Angeles, California 90045.

On December 18, 2007, I served the following document described as **OPPOSITION TO APPLICANT'S REQUEST FOR EXTENSION OF TIME FOR RESPONDING TO DISCOVERY** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelope(s) and/or package(s) addressed as follows:

Attorneys for Applicant:

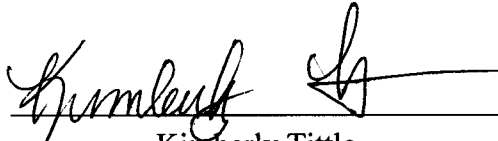
Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109-2127

- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California as first class mail.
- ☐ **BY FACSIMILE:** I served said document to be transmitted by facsimile to the addressee(s) at the listed facsimile number(s). The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.
- ☐ **BY FEDERAL EXPRESS:** I served such envelope or package to be delivered for the next day upon the addressee(s).
- ☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare that I am employed in the office of a member of the bar of this Court at whose direction such service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 18, 2007, at Los Angeles, California.



Kimberly Tittle